

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-1937V

DANIEL MILLER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 18, 2024

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Lauren Kells, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On December 21, 2020, Daniel Miller filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleged that he suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table Injury, after receiving influenza vaccine on October 22, 2019.³ Amended Petition at 1, ¶¶ 2, 13. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

³ Petitioner initially filed a cursory petition, without accompanying medical records, likely due to the potential removal of SIRVA from the Vaccine Injury Table. See National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table, Proposed Rule, 85 Fed. Reg. 43794 (July 20, 2020) (proposed removal of SIRVA from the Vaccine Injury Table); National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table, Delay of Effective Date, 86 Fed. Reg. 10835 (Feb. 23, 2021) (delaying the effective date of the final rule until April 23, 2021); National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table, Withdrawal of Final Rule, 86 Fed. Reg. 21209 (Apr. 22,

On June 28, 2024, I issued a ruling, finding Petitioner entitled to compensation for his SIRVA. ECF No. 53. On December 18, 2024, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$77,012.80, representing \$67,500.00 for pain and suffering and \$9,512.80 for past unreimbursable expenses. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$77,012.80, representing \$67,500.00 for pain and suffering and \$9,512.80 for actual unreimbursable expenses in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

2021) (rescinding the final rule). On April 22, 2022, he filed an amended petition, providing additional details and medical records citations. ECF No. 31.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

<p>DANIEL MILLER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 20-1937V</p> <p>Chief Special Master Corcoran</p> <p>ECF</p>
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On December 21, 2020, Daniel Miller (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to 34 (“Vaccine Act” or “Act”), alleging that he suffered a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine on October 22, 2019.¹ Petition at Preamble. On September 8, 2023, the Secretary of Health and Human Services (“respondent”) filed a Vaccine Rule 4(c) Report recommending that compensation be denied. ECF No. 48. On December 4, 2023, petitioner filed a responsive brief. ECF No. 52. On June 28, 2024, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his shoulder injury related to vaccine administration (“SIRVA”).² ECF No. 53.

¹ On April 22, 2022, petitioner filed an Amended Petition with additional information and citations to the medical record. ECF No. 31.

² Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master’s June 28, 2024, entitlement decision.

I. Items of Compensation

A. Pain and Suffering

Based on the evidence of record, respondent proffers that petitioner should be awarded **\$67,500.00** in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$9,512.80**. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following³: a lump sum payment of \$77,012.80, in the form of a check payable to petitioner.

II. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Daniel Miller:	\$77,012.80
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³ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

Respectfully submitted,

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/s/ Lauren Kells
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